

APPEAL NO. 032429
FILED OCTOBER 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 25, 2003. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 14% in accordance with the opinion of the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals this determination. The carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.125(e) provides that where there is a dispute as to the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is afforded the special, presumptive status given to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The claimant argues that the hearing officer erred in adopting the IR assigned by Dr. S, the designated doctor, because it does not include a rating for the claimant's compensable bilateral carpal tunnel syndrome (BCTS). The hearing officer noted that Dr. S addressed the BCTS but "did not find a ratable impairment." Nothing in our review of the record indicates that the hearing officer's IR determination is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Additionally, we perceive no reversible error in the hearing officer's statement that if "an injured worker's condition has improved significantly, due to treatment and surgery, assessing an IR based on her condition before she had received adequate treatment and undergone surgery would not comply with the law" as Section 401.011(30)(A) defines maximum medical improvement as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated."

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge